IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CWP No.4942 of 2004
Date of decision: 10. 7.2007

Darshan Pal Singh and others

...Petitioners

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. Amit Jhanji, Advocate, for the petitioners.
Mr. Suvir Sehgal, Addl.AG Punjab for respondent Nos. 1
1 to 3.
Mr. Puneet Kansal, Advocate for respondent No.4.

JUDGMENT:

This petition seeks a direction to absorb the petitioners against vacant posts in Cooperative Institutions/Government departments.

Case of the petitioners is that they joined Bathinda Cooperative Spinning Mills Limited Chandigarh – respondent No.5 during 1986 to 1994. In the year 1999, they applied for voluntary retirement. On 10.6.2003, their services were terminated w.e.f 15.9.2003 subject to permission of closure being granted.

The petitioners having become surplus are entitled to be

absorbed in other government departments in the light of judgment of this Court dated 28.9.1999 in RA No.538 of 1999 in CWP No.2483 of 1999 (**Pawan Kumar Datta and others v. State of Punjab and others)**, Annexure P.3, whereby it was directed that 50% posts which were lying vacant be filled up by absorbing the petitioners in the said petition who were rendered surplus on account of closure of Spinning Mills.

Stand taken by respondent Nos. 1 to 3 is that the judgment relied upon was a subject matter of consideration by the Hon'ble Supreme Court and the Government was under no obligation to absorb the petitioners in other departments.

CM No.20927 of 2005 has been filed on behalf of the petitioners wherein it is stated that on 6.8.2004, matter was adjourned sine die to await the judgment of the Hon'ble Supreme Court, which has been rendered on 30.8.2005 in Civil Appeal No.1126 of 2001 (**Punjab State Coop.Agrl.Dev.Bank Limited v. State of Punjab and others),** Annexure A-1.

We have perused the order passed by the Hon'ble Supreme Court dated 30.8.2005. The same is reproduced below:-

> "Heard learned counsel for the parties.
>
> It is clear from the undisputed factual position that the Circular Instruction dated 29.11.1991 which form the foundation of the High Court's original order has been withdrawn in terms of the

> Registrar's Judicial Determination of the issue by order dated 13.7.1993. It appears that at the review stage, reliance was placed on the directions contained in Memorandum dated 25.11.1997, which is still operative. That being the undisputed position, the High Court was correct in holding that the said circular was operative. However, the directions given by the High Court in the manner done do not appear to be on a sound footing. If any appointment was made in line with the Memorandum dated 25.11.1997, the same shall be operative, notwithstanding the expression of our view that the direction given by the High Court purportedly on the basis of Memorandum dated 25.11.1997 are incorrect. It is stated by learned counsel for some of the appellants that this memorandum surfaced for the first time during the review proceedings before the High Court, it is open to challenge by them. We express no opinion on that aspect. If it is open to challenge in any forum, the same shall be considered in its proper perspective by that forum. With these observations, the appeals are disposed of."

A perusal of the above order shows that the view taken by this Court earlier has not been approved. It has, however, been held that memorandum dated 25.11.1997 was still operative and if an appointment has been made in line with the memorandum, the same will be operative.

In view of above, we are unable to allow this petition on the basis of judgment, Annexure P.3 which has not been approved by the Hon'ble Supreme Court.

We, however, make it clear that the petitioners will be at liberty to represent for relief in terms of memorandum dated 25.11.1997, Annexure P.2 to the writ petition, which provides for giving of priority in making of appointments in Apex Cooperative Institutions.

The writ petition is disposed of in above terms.

(Adarsh Kumar Goel)
Judge

July 10, 2007 (Ajai Lamba)
'gs' Judge